STATE OF MICHIGAN

COURT OF APPEALS

FORD MOTOR COMPANY, Plaintiff-Appellant,	UNPUBLISHED February 17, 2011
v	No. 294411 Court of Claims
DEPARTMENT OF TREASURY, Defendant-Appellee.	LC No. 06-000003-MT

Before: HOEKSTRA, P.J., and FITZGERALD and BECKERING, JJ.

PER CURIAM.

Plaintiff Ford Motor Company (Ford) appeals as of right the order of the Court of Claims denying its motion for summary disposition under MCR 2.116(C)(10) and granting summary disposition to defendant, the Department of Treasury (the Department), under MCR 2.116(I)(2). We reverse the order granting summary disposition to the Department and remand for further proceedings.

I. BASIC FACTS AND PROCEDURAL HISTORY

The case involves the definition of "price" under the Use Tax Act (UTA), MCL 205.91 *et seq*. Specifically, the parties dispute the "price" of vehicles that Ford leased from Ford Motor Credit Company (Ford Credit) and then subleased to its employees and retirees and to employees and retirees of its subsidiaries (the sublessees).

During the time period at issue,[1] Ford sold vehicles to Ford Credit, and Ford Credit leased the vehicles back to Ford. The yearly lease rate of a vehicle was 28.8 percent of the wholesale delivered price. Ford then subleased the vehicles to the sublessees. The yearly sublease rate of a vehicle was 20.8 percent of the wholesale delivered price.

[1] The complaint states that the time periods at issue are September 1, 1998, through November 1, 2001, and December 1, 2001, through September 1, 2002. But, throughout its briefs, Ford states that the time period at issue is May 1, 1998, through September 30, 2002.

The sublease agreements contained the following provisions:

> 6. Lessee will primarily use the car for product testing and evaluation purposes . . . .
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> * * *
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> 9. It is mandatory that the Lessee furnish to the Company such written Testing and Evaluation Reports on the quality and performance of the Vehicle as the Company may require from the Lessee from time to time. Completion of these mandatory reports for each Vehicle is a condition precedent to ordering a replacement vehicle and failure to submit such reports on a timely basis shall constitute a default under this lease.
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> 10. To further the Company's interests by promoting its products, lessees are encouraged to permit others to drive the Vehicle for demonstration purposes. . . .

In 2003, Ford discovered that for the time period at issue it had paid use tax for the vehicles based on the 28.8 percent lease rate with Ford Credit. Believing that it was only required to pay use tax based on the 20.8 percent sublease rate with its sublessees, it requested a refund in the amount of $14,727,220.41. After the Department denied the refund request, Ford initiated the present action.

Ford moved for summary disposition under MCR 2.116(C)(10). In general, Ford's brief addressed the Department's previously stated reasons for denying the refund request: (1) that the employees who subleased vehicles provided additional employment services to Ford, and (2) the Department's rule on discounts did not apply because Ford subleased the vehicles at an economic loss.

In response, the Department requested summary disposition under MCR 2.116(I)(2). The Department claimed that the sublease agreements made "absolutely clear" that the sublessees were required to perform services in exchange for the sublease rate. The Department argued that because the UTA defines "price," in part, as "the aggregate value in money of anything paid or delivered," the value of the services required by the sublease agreements were to be included in the "price" of the vehicles. According to the Department, the difference between the lease rate and the sublease rate equaled the value of the services.

Ford countered that the Department's assertion that the value of the services required under the sublease agreements equaled the difference between the lease and sublease rates was "absurd." According to Ford, the only service mandated by the sublease agreements was the completion of a survey, and Ford stated the value of this service was de minimis or insignificant. In support of its assertion, Ford presented the affidavits of two employees who subleased vehicles. The employees averred that approximately 30 days after they subleased a vehicle Ford asked them to fill out a product survey. The survey listed 35 characteristics of a vehicle, and they were asked to rate each characteristic on a scale of one to five. According to the two employees, it took less than five minutes to complete the survey. The employees did not place any monetary value on the submission of the surveys. They completed the surveys at work while being paid by Ford. Ford did, however, request that if the Court of Claims found that the

services required under the sublease agreements had value that the court hold a hearing to determine the value of the services.

The Court of Claims granted summary disposition to the Department. According to the court, the sublease agreements required services of the sublessees and, because failure to provide the services constituted a default under the sublease agreement, the services were part of the consideration of the subleases. The court reasoned that because nothing in the UTA's definition of "price" indicated that any service provided by the consumer, even if de minimis, should be disregarded in determining the "price," the value of the services required under the sublease agreements must be included in the "price" of the vehicles. The court accepted the Department's claim that the value of the services equaled the difference between the lease and sublease rates.

II. ANALYSIS

On appeal, Ford does not contest that the value of any services required under the sublease agreements should be considered in determining the "price" of the vehicles. Rather, Ford argues that the value of the services required by the sublease agreements were de minimis, as was established by their uncontradicted affidavits, and should not be included in the "price" of the vehicles.

We review de novo a trial court's decision on a motion for summary disposition. *Diamond v Witherspoon*, 265 Mich App 673, 680; 696 NW2d 770 (2005). Summary disposition is proper under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." When deciding a motion under MCR 2.116(C)(10), a court must view the documentary evidence in the light most favorable to the nonmoving party. *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 443; 761 NW2d 846 (2008). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id.* (internal quotation marks and citation omitted). A court may grant summary disposition in favor of the opposing party if it appears that the opposing party is entitled to judgment. MCR 2.116(I)(2).

The UTA imposes a tax "for the privilege of using, storing, or consuming tangible personal property in this state at a rate equal to 6% of the price of the property . . . ." MCL 205.93(1). During the time period at issue, the UTA defined "price" as

> the aggregate value in money of anything paid or delivered, or promised to be paid or delivered, by a consumer to a seller in the consummation and complete performance of the transaction by which tangible personal property or services are purchased or rented for storage, use, or other consumption in this state, without a

> deduction for the cost of the property sold, cost of materials used, labor or service cost, interest or discount paid, or any other expense. . . . [MCL 205.92(f).][2]

Under the sublease agreements, the sublessees were mandated to submit testing and evaluation reports on the subleased vehicles as Ford would require. We agree with the Court of Claims that because a failure to submit the evaluation reports constituted a default under the sublease agreements, the submission of the reports was part of the consideration for the subleases. Thus, the submission of the evaluation reports was something "promised to be . . . delivered[] by a consumer to a seller in the consummation and complete performance of the transaction."[3]

The affidavits submitted by Ford established that the evaluation reports were neither complicated nor time consuming. The reports, which asked the sublessees to rate 35 characteristics, took less than five minutes to complete, and the sublessees completed the evaluation reports while at work. Nonetheless, we agree with the Court of Claims that nothing in the UTA's definition of "price" indicates that any service promised by the consumer in the complete performance of the transaction, even if de minimis, may be disregarded in computing the "price" of the property. See *One's Travel Ltd v Dep't of Treasury*, 288 Mich App 48, 54; 791 NW2d 521 (2010) ("If the language [of a statute] is plain and unambiguous, judicial construction is neither necessary nor permitted, and the language must be applied as written."); *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002) ("[A] court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself."). Accordingly, we hold that the Court of Claims did not err in denying Ford's motion for summary disposition.

We also hold that the Court of Claims erred in accepting the Department's assertion that the value of the services required under the sublease agreements equaled the difference between the lease rate and the sublease rate. When the services required under the sublease agreements are given a monetary value equal to the difference between the lease and the sublease rates, an illogical result is reached: because the lease and sublease rates are a percentage of the wholesale delivery prices of the vehicles, identical services provided by the sublessees receive different monetary values. In other words, it is illogical that the services provided by a sublessee of a luxury vehicle would have a significantly higher monetary value than the services provided by a sublessee of an economy car.[4] The value in money of the services required under the sublease

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[2] MCL 205.92(f) was amended by 2004 PA 172.

[3] We do not decide whether the sublessees' agreement that they would drive the vehicles primarily for testing and evaluation purposes and their acceptance of Ford's encouragement to permit others to drive the vehicles were things "delivered[] or promised to be . . . delivered." We leave that question to be decided for the Court of Claims on remand.

[4] For example, the difference between the lease rate and the sublease rate for an $86,000 Range Rover is $6,880, while the difference between the lease rate and the sublease rate for an $8,653 Ford Focus is $692.

agreements should be the same for all of the subleases, determined without regard to the value of the subleased vehicle. In our opinion, the value of the services required of the sublessees under the sublease agreements is a factual question on which reasonable minds might differ. Accordingly, we reverse the order granting summary disposition to the Department and remand for proceedings to determine the value in money of the services required under the sublease agreements.

Reversed and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering